

Penerapan prinsip the Best Interest of the Child dalam Penentuan Hak Asuh Anak di Inggris dan Indonesia (Studi Putusan Pengadilan Keluarga Guildford [2023] EWFC 118 dan Putusan Pengadilan Negeri Jakarta Utara Nomor 296/Pdt.G/2019/PN Jkt.Utr) = Application of the Principle of the Best Interest of the Child in Determining Child Custody in England and Indonesia (Study Of Decisions Guildford Family Court [2023] EWFC 118 And North Jakarta District Court Number 296/Pdt.G/2019/PN Jkt.Utr)

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Abstrak

Persoalan hak asuh anak setelah putusnya perkawinan membutuhkan perhatian khusus terhadap pemenuhan hak-hak anak. Majelis Hakim dalam memutus perkara hak asuh anak sudah seharusnya berlandaskan pada prinsip The Best Interest of the Child. Penelitian ini menganalisis bagaimana prinsip The Best Interest of the Child dimaknai dalam Konvensi Hak Anak dan relevansinya terhadap pemenuhan hak asuh anak, serta bagaimana pengaturannya dalam hukum Indonesia dan Inggris, termasuk penerapannya pada Putusan Pengadilan Keluarga Guildford [2023] EWFC 118 dan Putusan Pengadilan Negeri Jakarta Utara Nomor 296/Pdt.G/2019/PN Jkt.Utr. Melalui hal tersebut, penelitian ini disusun menggunakan metode pendekatan perbandingan berbentuk doktrinal. Di Indonesia, hakim cenderung menitikberatkan pada usia anak atau kedekatan anak dengan salah satu orang tua, tanpa evaluasi yang menyeluruh serta tanpa melibatkan tenaga profesional seperti psikolog atau pekerja sosial. Hal ini disebabkan karena belum adanya aturan hukum yang secara tegas merinci parameter penilaian prinsip The Best Interest of the Child dalam penentuan hak asuh anak. Sebaliknya, sistem hukum Inggris melalui Children Act 1989 telah mengatur secara tegas melalui welfare checklist yang digunakan oleh hakim dengan melibatkan ahli dalam menilai kesejahteraan anak. Oleh karena itu, Indonesia perlu membentuk aturan khusus sebagai pedoman penerapan prinsip The Best Interest of the Child dalam penentuan hak asuh anak.

.....The issue of child custody following the dissolution of marriage requires special attention to the fulfillment of children's rights. The Panel of judges plays a significant role in deciding child custody cases, which should ideally be based on the principle of The Best Interest of the Child. This study analyzes how the principle of The Best Interest of the Child is interpreted in the Convention on the Rights of the Child and its relevance to the fulfillment of child custody rights, as well as how it is regulated in the legal systems of Indonesia and England, including its application in the Guildford Family Court Decision [2023] EWFC 118 and the North Jakarta District Court Decision Number 296/Pdt.G/2019/PN Jkt.Utr. This study employs a comparative doctrinal approach. In Indonesia, judges tend to emphasize the child's age or the closeness of the child to one of the parents without conducting a comprehensive evaluation and without involving professionals such as psychologists or social workers. This occurs due to the absence of clear legal regulations detailing the assessment parameters of The Best Interest of the Child in custody decisions. In contrast, the English legal system, through the Children Act 1989, has specifically regulated the assessment of The Best Interest of the Child through the welfare checklist, which is used by judges with the involvement of experts in evaluating the child's welfare. Therefore, Indonesia needs to establish specific

regulations as a guideline for applying the principle of The Best Interest of the Child in custody determinations.